

Assembly Bill No. 98

CHAPTER 838

An act to amend Sections 11375 and 11377 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 12, 2001. Filed
with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 98, Zettel. Controlled substances.

(1) Existing law makes it a crime to possess for sale or to sell materials, compounds, mixtures, or preparations containing certain controlled substances, as specified, punishable by imprisonment in a county jail for a period of not more than one year or in the state prison.

This bill would, in addition, make it an infraction or a misdemeanor to possess the substances specified in that provision, except upon the prescription of a physician, a dentist, or others. The bill would make a conforming change to a related provision. By creating new crimes, this bill would impose a state-mandated local program upon local governments.

(2) This bill would incorporate additional changes in Section 11377 of the Health and Safety Code proposed by AB 258, that would become operative only if AB 258 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11375 of the Health and Safety Code is amended to read:

11375. (a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b) (1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

- (1) Chlordiazepoxide.
- (2) Clonazepam.
- (3) Clorazepate.
- (4) Diazepam.
- (5) Flurazepam.
- (6) Lorazepam.
- (7) Mebutamate.
- (8) Oxazepam.
- (9) Prazepam.
- (10) Temazepam.
- (11) Halazepam.
- (12) Alprazolam.
- (13) Propoxyphene.
- (14) Diethylpropion.
- (15) Phentermine.
- (16) Pemoline.
- (17) Triazolam.

SEC. 2. Section 11375 of the Health and Safety Code, as amended by Chapter 616 of the Statutes of 1992, is amended to read:

11375. (a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b) (1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

- (1) Chlordiazepoxide.
- (2) Clonazepam.
- (3) Clorazepate.
- (4) Diazepam.
- (5) Flurazepam.
- (6) Lorazepam.



- (7) Mebutamate.
- (8) Oxazepam.
- (9) Prazepam.
- (10) Temazepam.
- (11) Halazepam.
- (12) Alprazolam.
- (13) Propoxyphene.
- (14) Diethylpropion.
- (15) Phentermine.
- (16) Pemoline.
- (17) Fenfluramine.
- (18) Triazolam.

SEC. 3. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 3.5. Section 11377 of the Health and Safety Code is amended to read:



11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 11377 of the Health and Safety Code proposed by both this bill and AB 258. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 11377 of the Health and Code, and (3) this bill is enacted after AB 258, in which case Section 3 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or



changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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